

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 26**

RIN 1018-AV43

Public Access, Use, and Recreation Regulations for the Upper Mississippi River National Wildlife and Fish Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are adopting new regulations for the Upper Mississippi River National Wildlife and Fish Refuge (refuge) to govern existing general public use and recreation. These changes will take effect in spring 2008 and will implement the recently completed comprehensive conservation plan (CCP) for the refuge. This regulation codifies many existing refuge regulations currently published in and by brochures, signs, maps, and other forms of public notice.

DATES: This rule is effective May 27, 2008.

FOR FURTHER INFORMATION CONTACT: Don Hultman, (507) 452-4232; Fax (507) 452-0851.

SUPPLEMENTARY INFORMATION: The Upper Mississippi River National Wildlife and Fish Refuge (refuge) encompasses 240,000 acres in a more-or-less continuous stretch of 261 miles of Mississippi River floodplain in Minnesota, Wisconsin, Iowa, and Illinois. Congress established the refuge in 1924 to provide a "refuge and breeding place" for migratory birds, fish, other wildlife, and plants. The refuge is perhaps the most important corridor of habitat in the central United States, due to its species diversity and abundance, and it is the most visited refuge in the United States, with 3.7 million annual visitors.

The development of an environmental impact statement (EIS) and CCP for the refuge began with a notice of intent to prepare the EIS, which we published in the **Federal Register** on May 30, 2002 (67 FR 37852). We followed with a notice of availability of our Draft EIS (April 28, 2005; 70 FR 22085), and we accepted public comments on the Draft EIS for 120 days. On October 7, 2005, we published a notice of intent to prepare a Supplement to the Draft EIS (70 FR 58738). We made the Supplement to the Draft EIS available on December 5, 2005 (70 FR 72462), and accepted public comments on that

document for 60 days, extended to 90 days (January 17, 2006, 71 FR 2561).

We offered public involvement through 46 public meetings and workshops attended by 4,500 persons in 14 different communities in 4 States during the 4-year planning process. In addition, we held or attended 80 other meetings with the States, other agencies, interest groups, and elected officials to discuss the Draft EIS, and mailed three different planning update newsletters to up to 4,900 persons or organizations on our planning mailing list. We also issued numerous news releases at various planning milestones, and held two press conferences.

On July 11, 2006, we published a notice of availability of our Final EIS (71 FR 39125), and we accepted public comments on the Final EIS for 30 days. On August 24, 2006, the Regional Director of the Midwest Region of the Fish and Wildlife Service signed the Record of Decision that documented the selection of Alternative E, the Preferred Alternative presented in the Final EIS. We published a notice of availability of that Record of Decision on November 2, 2006 (71 FR 64553).

In accordance with the Record of Decision, we prepared a CCP based on Alternative E. The CCP was approved on October 24, 2006. The National Wildlife Refuge System Administration Act of 1966 [16 U.S.C. 668dd-668ee (Administration Act)], as amended by the National Wildlife Refuge System Improvement Act of 1997 (Improvement Act) requires the Secretary of the Interior (Secretary) to manage each refuge in a manner consistent with a completed CCP. The Final EIS and CCP are available at <http://www.fws.gov/midwest/planning/uppermiss>.

In accordance with the recently completed CCP, on June 28, 2007, we published a proposed rule in the **Federal Register** (72 FR 35380) identifying amendments to the refuge-specific regulations for hunting and sport fishing on the refuge and invited 30 days of public comment. We published the final rule on September 7, 2007 (72 FR 51534).

On October 17, 2007, we published a proposed rule (72 FR 58982) to amend the refuge-specific regulations governing existing general public use and recreation. We accepted public comments on the proposal for 60 days, ending December 17, 2007. This final rule adopts, with certain changes described below, the amendments we proposed on October 17, 2007.

This final rule implements the goals, objectives, and strategies spelled out in the CCP pertaining to wildlife observation, photography,

interpretation, environmental recreation, and other forms of recreation, access, and use such as boating and camping.

This rule also codifies current refuge-specific regulations contained in brochures and signs and on maps, fine-tunes the language of same for clarity and ease of enforcement, and generally modernizes the regulations for consistency with the principles of sound fish, wildlife, and recreation management.

Regulations stemming from the CCP include the establishment of 4 new electric motor-only areas totaling 1,630 acres (1 such area of 222 acres already exists) and 8 new seasonal slow, no-wake areas totaling 9,370 acres. In electric motor-only areas, watercraft may only be powered by electric motors or nonmotorized means. In slow, no-wake areas from March 16 through October 31, watercraft must travel at slow, no-wake speed, and we prohibit airboats and hovercraft. These areas remain open to all forms of recreation, including hunting and fishing, and only the means of access changes to lessen wildlife and habitat disturbance and balance the needs of the estimated 3.7 million annual visitors to the refuge. Collectively, these areas account for 8 percent of the water area of the refuge, leaving 92 percent of the water area of the refuge open to watercraft without restriction.

Other regulations stemming from the CCP include a ban of glass food and beverage containers on beach areas and other lands of the refuge; clarifying the definition and requirements for camping and campsite sanitation; clarifying rules for fire and firewood use; and clarifying rules for vehicles, firearms, and domestic animals on the refuge.

The Administration Act authorizes the Secretary to allow uses of refuge areas, including wildlife-dependent and other recreation, upon a determination that such uses are compatible with the purposes of the refuge and National Wildlife Refuge System (Refuge System) mission. The action also must be in accordance with provisions of all laws applicable to the areas, developed in coordination with the appropriate State fish and wildlife agency(ies), and consistent with the principles of sound fish and wildlife management and administration. These requirements ensure that we maintain the biological integrity, diversity, and environmental health of the Refuge System for the benefit of present and future generations of Americans.

The Secretary is required to prepare a CCP for each refuge and shall manage each refuge consistent with the CCP.

Each CCP must identify and describe the refuge purposes; fish, wildlife, and plant populations; cultural resources; areas for administrative or visitor facilities; significant problems affecting resources and actions necessary; and opportunities for compatible wildlife-dependent recreation. We must also develop each CCP through consultation with the other States, agencies, and the public, and coordinate with applicable State conservation plans.

Each CCP is guided by the overarching requirement that we manage refuges to fulfill the purposes for which they were established and to carry out the mission of the Refuge System. In addition, the Improvement Act requires that we administer the Refuge System to provide for the conservation of fish, wildlife, and plants and their habitats, and to ensure their biological integrity, diversity, and environmental health.

We developed the CCP for the refuge in accordance with all requirements and in accordance with the consultation and public involvement provisions of the Improvement Act. This includes new compatibility determinations for interpretation, wildlife observation and photography, environmental education, beach-related uses, boating, camping, and other allowed recreation. We reference and list these compatibility determinations in Appendix E of the Final EIS. We then developed this rule to implement portions of the CCP.

Plain Language Mandate

In this rule, we comply with a Presidential mandate to use plain language in regulations. As examples, we use “you” to refer to the reader and “we” to refer to the Service, the word “allow” instead of “permit” when we do not require the use of a permit for an activity, and we use active voice whenever possible (e.g., “We allow camping on all lands and waters of the refuge” rather than “Camping is allowed on all lands and waters of the refuge”).

Statutory Authority

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee), as amended by the National Wildlife Refuge System Improvement Act of 1977, and the Refuge Recreation Act of 1962 (16 U.S.C. 460k–460k–4) (Recreation Act) govern the administration and public use of refuges.

This document codifies in the Code of Federal Regulations public use and recreation regulations that are applicable to the Upper Mississippi River National Wildlife and Fish Refuge. We are doing this to implement the

refuge CCP, better inform the general public of the regulations at the refuge, increase understanding and compliance with these regulations, and make enforcement of these regulations more efficient. In addition to finding these regulations in 50 CFR part 26, visitors will find them reiterated in literature distributed by the refuge and posted on signs at major access points. Visitors will also find the boundaries of closed areas or other restricted-use areas referenced in these regulations marked by specific signs.

This rule includes cross-references to a number of existing regulations in 50 CFR parts 26, 27, and 32 to assist visitors with understanding safety and other legal requirements on refuges. This redundancy is deliberate, with the intention of improving safety and compliance in our general public use and recreation programs.

Response to Public Comment

In the October 17, 2007, **Federal Register** (72 FR 58982), we published a proposed rule for new regulations for the refuge and invited public comments. We reviewed and considered all comments received by December 17, 2007, the end of the 60-day comment period. We received 22 comments on the proposed rule. Since comments were often similar or commenters covered multiple topics, we have grouped many of the comments/responses by major issue area.

Comment 1: A commenter was opposed to prohibiting the collection of shed deer antlers, saying that it was a wholesome outdoor pastime that posed no harm since most of the refuge was already open to walking.

Response 1: We have changed the final rule to allow the collection of shed deer antlers based on this comment and internal discussions weighing the positives and negatives of this activity.

Comment 2: A commenter wanted to clarify that it is not practical for a hovercraft to pass through a slow, no-wake zone at reduced speed since a wake is created with hovercraft at slower speeds.

Response 2: We have noted this comment but did not change the rule as a result. Since hovercraft are prohibited from electric motor areas year-round and in slow, no-wake areas from March 16 through October 31, it is a moot point whether hovercraft do or do not create a wake at slow speed since their use is prohibited. In the linear, slow, no-wake zones, we apply the respective State definition for slow, no-wake operation, which in many States like Wisconsin, allows the speed necessary to maintain proper control and steerage. These

definitions would also apply to hovercraft in these zones. Due to the small number of these zones and multiple river access points, we do not believe the zones will cause much inconvenience to hovercraft access and use.

Comment 3: Several commenters expressed general opposition to the CCP for the refuge and thus opposition to the proposed rule.

Response 3: We understand that many citizens remain opposed to changes reflected in the CCP. We made a concerted effort to keep citizens informed and to consider their comments and suggestions in crafting the CCP. We developed the CCP through extensive public involvement including 46 public meetings or workshops attended by 4,500 citizens, and offered longer than normal comment periods on the Draft EIS and subsequent Supplement. However, we have an obligation to manage the refuge in accordance with the Refuge Administration Act and policies and regulations governing the Refuge System. These mandates require that we manage refuges to accomplish their established purposes and that recreation and use opportunities afforded the public are compatible with those purposes. The CCP was approved October 24, 2006, and we are now obligated to implement the plan in accordance with the Refuge Administration Act. The new rules implement portions of the CCP dealing with public access, use, and recreation, and ensure that these activities remain a safe and compatible use on the refuge. We made no change to the rule as a result of these comments.

Comment 4: A commenter expressed support for the proposed rule and a commenter expressed support for the refined definitions regarding dogs, camping, beaching, boat mooring, campfires, and litter.

Response 4: We have noted these comments but did not change the rule as a result.

Comment 5: Several commenters were against restrictions to airboat or hovercraft use through the designation of slow, no-wake areas and electric motor areas. These commenters noted that the restriction was discriminatory toward certain watercraft users, most airboaters operated below 86 decibel noise level, airboats do little environmental damage, and the restriction would limit volunteer search and rescue efforts.

Response 5: We thoroughly analyzed the effects of airboats and hovercraft and the establishment of electric motor areas and slow, no-wake areas in this rule

against physical, biological, and socio-economic parameters in the EIS prepared as part of the CCP process. Watercraft speed and noise, even below 86 decibels, have been shown to be major wildlife disturbance factors in both off-refuge and on-refuge studies. We are establishing the electric motor areas and slow, no-wake areas to reduce disturbance in the backwater areas of the refuge which provide important nurseries for many fish, amphibian, and bird species. These area-specific regulations will also limit disturbance to persons who desire a slower and quieter hunting, fishing, and wildlife observation experience. As noted in the **SUPPLEMENTARY INFORMATION** section of this rule, there will remain ample area and opportunity for unrestricted airboat use. Collectively, these restricted areas account for 8 percent of the water area of the refuge, leaving 92 percent of the water area open to all watercraft without restriction. The electric motor areas and slow, no-wake areas also remain open to all forms of recreation, including hunting and fishing. During bona fide emergency situations like search and rescue, common sense dictates that we would temporarily suspend restrictions for emergency workers and volunteers. We made no change to the rule as a result of these comments.

Comment 6: A commenter reminded us that the Wisconsin Department of Natural Resources does not have the authority to enact or enforce rules on the Mississippi River that regulate the means of navigation and this authority rests with local municipalities. We were encouraged to work with local municipalities and the public in pursuing designation of the slow, no-wake areas and electric motor areas.

Response 6: As noted in our response to Comment 5, we are establishing electric motor and slow, no-wake areas to protect sensitive backwater areas of the refuge and provide an alternative recreation experience. Throughout the EIS and CCP preparation process, we received comments and input from the public and local governments and responded with many changes to the electric motor and slow, no-wake area designations in the CCP. Although we continue to value input, we believe we would be abdicating our responsibility to manage the refuge in accordance with its establishing legislation, the Refuge Administration Act, and Refuge System policies and regulations if we did not carry out the actions approved in the CCP.

We are, however, with respect to slow, no-wake zones (which are linear or corridor designations), coordinating with local units of government and

seeking their concurrence before establishing them. These zones are designed to improve boating safety due to narrow channels or blind spots, or to reduce bank erosion. Our coordination with the local units of government on these zones is in keeping with the language in the CCP. We made no change to the rule based on this comment.

Comment 7: A commenter suggested that the proposed rule be modified to include an exemption for State and federal agencies entering restricted areas for bona fide fish and wildlife management, monitoring, and enforcement activities.

Response 7: These rules govern public access, use, and recreation and are not intended to apply to States or other agencies continuing to carry out their responsibilities for fish and wildlife management and enforcement. We do not believe that exemptions for States or other agencies are necessary or practicable from a rulemaking standpoint. However, the exemption is clearly articulated in the CCP on page 107, and says "special designation regulations are general public use regulations and not intended to apply to state, federal, and local agencies engaged in bona fide fish and wildlife management, monitoring, and enforcement." We are obligated to manage the refuge consistent with language in the CCP. We made no change to the rule based on this comment.

Comment 8: A commenter suggested that the prohibition of chainsaws on the refuge without a permit be clarified so it does not affect through-the-ice commercial fishing operations. It was suggested that the language be modified to prohibit chainsaws on any refuge "lands."

Response 8: We have changed the final rule by removing the wording prohibiting the possession of chainsaws without a permit. We believe regulations dealing with the protection of plants and the cutting of campfire wood are adequate to protect refuge habitat.

Comment 9: Several commenters contend that the refuge does not have the authority to restrict uses on navigable waters within the refuge. They contend the CCP and these proposed rules usurp Wisconsin authority on sovereign waters, violate Wisconsin's Public Trust Doctrine, and are a breach of Wisconsin's original conditioned consent to establishment of the refuge.

Response 9: We received similar comments during preparation of the CCP. Neither the Wisconsin Department

of Natural Resources' nor the Wisconsin Attorney General's comments included in the EIS said the Service has intruded or impinged on State authority. In particular, the Attorney General's comments on this issue did not say that the Service crossed a line that would constitute intrusion into State authority.

As the Attorney General acknowledged in citing Wisconsin Supreme Court rulings, public rights on navigable waters are to be protected, but no public right is absolute and must be balanced with other public rights: " * * * the court stated the kinds of factors that must be considered to determine whether the balance of public rights and interests has been sufficiently struck. They include whether public bodies will control the use of the area; whether the area will be devoted to public purposes and open to the public; whether the diminution of water area available to the public will be small when compared with the whole of the water body; whether no one of the public uses of the waterway will be destroyed or greatly impaired; and whether the disappointment of those members of the public who may desire to exercise particular public rights in the area is negligible when compared with the greater convenience to be afforded those members of the public who use the area."

The Attorney General's comments indicate that Wisconsin's Public Trust Doctrine embodies exactly the type of program we have been trying to develop, namely, balancing competing uses, acknowledging that no one public right is absolute. We also believe our proposal is in keeping with the Attorney General's urging that "any such restrictions are reasonable and are not imposed to the exclusion of other key factors that affect the conservation of resources in the Refuge." We addressed the State's 1925 consent language in the EIS and CCP and developed our plan and regulations to meet those conditions. We continue to recognize and respect the various State and U.S. Army Corps of Engineers authorities while carrying out our responsibilities to manage a national wildlife refuge in accordance with the Refuge Administration Act. We made no change to the rule based on these comments.

Comment 10: A commenter was concerned that the proposed rule violates the sovereignty of the State of Minnesota in regard to jurisdiction of State waters and the limits placed on navigation.

Response 10: We do not claim authority to control general navigation on the Upper Mississippi River as this

is under the purview of the U.S. Army Corps of Engineers, U.S. Coast Guard, and various State agencies, and we continue to respect State authorities and sovereignty (see related Comment 9 and our response). We believe we do have the authority to control public entry and use on the refuge under the authorities cited in the **Statutory Authority** section of this rule. In summary, the United States owns the bed of the inundated areas of the refuge where we proposed restrictions and thus the Property Clause of the Constitution and laws that established the refuge and govern the administration of the Refuge System apply. These laws grant authority to control all entry and public use. However, we believe we have been diligent in balancing the public need to enjoy the refuge while safeguarding fish and wildlife resources and habitat. The CCP and this rule continue to ensure relatively free and open access. We believe this has been accomplished through controlling the means of navigation within the refuge on specific areas when necessary rather than controlling navigation itself. We made no change to the rule based on this comment.

Comment 11: A commenter stated that the Service cannot lawfully establish regulations limiting navigation in the refuge without formal State of Wisconsin concurrence, and such concurrence has not been given.

Response 11: We view the provisions of Wisconsin's original law granting consent for the establishment of the refuge seriously and have worked diligently to meet its conditions (see Comment 9 and response). Although there is no requirement of formal State consent for refuge management actions, such as this rule, we have approached these issues in an open manner and included the State at every stage of development of the CCP and subsequent rules. The State has had every opportunity to raise its own issues—which it did—and we responded by modifying the CCP in a number of ways including changes to waterfowl hunting closed areas, adding voluntary compliance provisions, changes to delineation of electric motor and slow, no-wake areas, safeguarding State access in restricted areas, and modifications to the number and scope of step-down management plans. We understand that all States work with different constituent groups, legislative oversight, and rulemaking processes when compared to the refuge. Although we respect these differences, as well as the State's authority to adopt or not adopt similar State regulations, we cannot

abdicate our responsibilities to manage the refuge in accordance with federal laws and Refuge System policies and regulations. We made no change to the rule based on this comment.

Comment 12: Two commenters cited the 1928 court case *U.S. v. 2,271.29 Acres* in regard to State and Federal authorities concerning navigation and these regulations.

Response 12: We have reviewed this case and believe that these regulations do not conflict with any of the case's holdings. We believe our responses to Comments 9, 10, and 11 cover questions concerning jurisdiction and authority for these regulations.

Modifications From the Proposed Rule

We are making three changes in this final rule as a result of public comment or further internal discussion. These changes are as follows:

(1) In section (a)(5), we deleted the reference to shed deer antlers and changed the wording in section (a)(4) so that the collection of shed deer antlers for personal use is allowed;

(2) In section (a)(6), we deleted the prohibition of chainsaws on the refuge; and

(3) In section (c)(3), we changed the minimum camping distance from various recreation facilities from 100 feet (30 meters) to 200 feet (60 meters).

Regulatory Planning and Review

In accordance with the criteria in E.O. 12866, we assert that this rule is not a significant regulatory action. The Office of Management and Budget (OMB) makes the final determination under E.O. 12866.

a. This rule will not have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government. A cost-benefit and full economic analysis is not required. However, a brief assessment follows to clarify the costs and benefits associated with this rule.

The purpose of this rule is to implement public use and recreation regulations on the Upper Mississippi River National Wildlife and Fish Refuge beginning with the spring 2008 recreation season. These regulations are derived from and are consistent with the CCP approved October 24, 2006. We documented the environmental and socioeconomic impacts of the CCP in the Final EIS (available at <http://www.fws.gov/midwest/planning/uppermiss>).

Costs Incurred

Costs incurred by this regulation include sign-posting, leaflet preparation

and printing to provide information to the public, law enforcement, and monitoring. However, these are regular and recurring functions on the refuge with or without these regulations, and we can handle these functions within normal budget and staffing levels. Therefore, we expect any costs to be minor in the short term and negligible in the long term.

Benefits Accrued

These regulations will have several effects on wildlife observation, recreational boating, camping, and other beach-related uses such as swimming, picnicking, and sunbathing. These public uses account for the most annual refuge visits (1.67 million) outside of hunting and fishing. All of these uses will continue, although in some areas the means of use will change to balance the needs of a diverse public who enjoys the refuge in various ways, to safeguard visitors, and to safeguard sensitive fish and wildlife habitat.

The following projections and estimations of use levels and economic benefit for wildlife observation, boating, camping, and beach-related uses are based on projected trends over the 15-year span of the CCP. While it is not possible to quantify increases in these activities that result from this rule per se, we expect the rule to contribute to these trends by improving conditions for these activities in certain areas.

We estimate that wildlife observation visits will increase 20 percent over the 15-year life of the CCP due to overall long-term trends in wildlife observation visits, habitat improvements, access improvements, and a marked increase in wildlife observation-related facilities outlined in the CCP. We predict these regulations will have no effect on the positive economic impact as reflected in Table 1 below.

Table 1 shows the expected annual change by the end of the 15-year life of the CCP compared with FY 2003 for the 19-county area on and adjacent to the refuge. We expect annual wildlife observation visitation to increase by 20 percent, resulting in 61,403 more wildlife observation visits. Retail expenditures associated with this increased visitation total \$812,658, with total economic output (based on an output multiplier of 1.23 for the 19-county region impacted by the refuge) of \$993,723. An additional 14 jobs with associated income of \$214,297 would occur, along with an additional \$104,531 in Federal and State tax revenue.

TABLE 1.—ANNUAL ECONOMIC IMPACTS OF CCP IMPLEMENTATION COMPARED WITH FY 2003 IMPACTS: WILDLIFE OBSERVATION VISITORS

[2003 dollars]

Impacts	FY 2003	Annual change (from FY 2003 for 15-year span of CCP)
Wildlife Observation Visitors	307,013	+61,403
Expenditures	\$4,063,292	+\$812,658
Economic Output	\$4,968,614	+\$993,723
Jobs	68	+14
Job Income	\$1,071,484	+\$214,297
Federal and State Taxes	\$522,657	+\$104,531

These regulations will have several effects on current boating opportunities on the refuge. Approximately 140,000 acres of water will remain open to boating, but 1,852 acres of backwater areas will be designated electric motor only and another 9,370 acres will be designated seasonal (March 16 through October 31) slow, no-wake areas where boaters must travel at slow, no-wake speed, and we will prohibit airboats and hovercraft. Collectively, these areas account for 8 percent of the water area of the refuge. These areas remain open to all allowed uses.

These regulations will have little effect on camping and other beach-related use levels, since the areas open

will remain virtually unchanged. These regulations could, however, improve the quality of the experience by clarifying and fine-tuning existing regulations on camping, boat mooring, reserving sites, length of stay, campfires, sanitation, and other aspects of the use which can cause conflicts among visitors. Also, a regulation banning the possession of glass food and beverage containers on beaches and other lands will improve visitor safety.

We expect annual visits for boating, camping, and beach-related activities to remain about the same, although we expect visits for silent watercraft recreation (canoes and kayaks) to increase an estimated 15 percent due to

the electric motor areas and slow, no-wake areas. We predict a corresponding modest positive change in economic impact as reflected in Table 2.

Table 2 shows the expected annual change by the end of the 15-year CCP lifespan compared with FY 2003 in the 19-county area. We expect the annual number of boating, camping, and beach-related use visitors to increase by 2,044, with associated retail expenditures of \$52,010 and total economic output of \$63,400. We associate these expenditures and output with 1 job and \$213,567 in job-related income. Federal and State tax revenue would increase by \$6,838.

TABLE 2.—ANNUAL ECONOMIC IMPACTS OF CCP IMPLEMENTATION COMPARED WITH FY 2003 IMPACTS: RECREATIONAL BOATING, CAMPING, AND OTHER BEACH-RELATED USE VISITORS

[2003 dollars]

Impacts	FY 2003	Annual change (from FY 2003 for 15-year span of CCP)
Boating, Camping, and Other Beach Use Visitors	1,362,851	+2,044
Expenditures	\$34,673,216	+\$52,010
Economic Output	\$42,266,199	+\$63,400
Jobs	535	+1
Job Income	\$9,044,582	+\$213,567
Federal and State Taxes	\$4,558,847	+\$6,838

b. This rule will not create inconsistencies with other agencies' actions. This action pertains solely to the management of the Refuge System. The wildlife observation, boating, camping, and other general recreation activities located on the Upper Mississippi River National Wildlife and Fish Refuge account for less than 1 percent of the available supply in the United States. Any small, incremental change in the supply of recreational opportunities will not measurably impact any other agencies' existing programs.

c. This rule will not materially affect entitlements, grants, user fees, loan

programs, or the rights and obligations of their recipients. This rule does not affect entitlement programs. There are no grants or other Federal assistance programs associated with public use on national wildlife refuges.

d. This rule will not raise novel legal or policy issues that were not addressed in the Final EIS. This rule continues the practice of allowing recreational public use of the refuge. Many refuges in the Refuge System currently have opportunities for the public to engage in interpretation, wildlife observation, and other wildlife-dependent uses, and also allow regulated boating, camping, and other general recreation.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act [SBREFA] of 1996) (5 U.S.C. 601 et seq.), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not

have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for “significant impact” and a threshold for a “substantial number of small entities.” See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

This rule does not decrease the number of recreation types allowed on the refuge but amends current noncodified regulations on the refuge.

As a result, opportunities for wildlife observation, boating, camping, and other general recreation on the refuge will remain abundant and increase over time.

Many small businesses within the retail trade industry (such as hotels, gas stations, outdoor sports shops, etc.) may benefit from some increased refuge visitation. A large percentage of these retail trade establishments in the majority of affected counties qualify as small businesses (Table 3).

We expect that the incremental recreational opportunities will be scattered, and so we do not expect that the rule will have a significant economic effect (benefit) on a substantial number of small entities in

any given community or county. Using the estimate derived in the *Regulatory Planning and Review* section, we expect recreationists to spend an additional \$865,000 annually in total in the refuges’ local economies. As shown in Table 3, this represents less than 0.001 percent of the total amount of retail expenditures in the 19-county area. For comparison purposes, we show the county with the smallest retail expenditure total, Buffalo County in Wisconsin. If the entire retail trade expenditures associated with the 2008 public use and recreation regulations occurred in Buffalo County, this would amount to a 1.48 percent increase in annual retail expenditures.

TABLE 3.—COMPARATIVE EXPENDITURES FOR RETAIL TRADE ASSOCIATED WITH ADDITIONAL REFUGE VISITATION FROM CCP IMPLEMENTATION

	Retail trade in 2002	Change during CCP implementation (15-year span of CCP)	Change as percent of total retail trade	Total number of retail establishments	Establishments with fewer than 10 employees
19 County Area	\$9.8 billion ...	\$864,668	0.0097	24,878	17,957
Buffalo County, WI	58.3 million ..	864,668	1.48	350	290

Therefore, we certify that this rule will not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. We anticipate no significant employment or small business effects. This rule:

a. Will not have an annual effect on the economy of \$100 million or more. By the end of the 15-year CCP lifespan, the additional recreational opportunities on the refuge are expected to generate an additional \$865,000 in visitor expenditures with an economic impact estimated at \$1.06 million per year (2003 dollars). Consequently, the maximum benefit of this rule for businesses both small and large will not be sufficient to make this a major rule. The impact will be scattered across 19 counties and will most likely not be significant in any local area.

b. Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. We do not expect this rule to affect the supply or demand for wildlife observation, boating, camping, and other general recreation opportunities in the United States and,

therefore, it should not affect prices for related recreation equipment and supplies, or the retailers that sell equipment. Additional refuge recreation opportunities could account for a virtually undetectable percent of the available opportunities in the United States.

c. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rule represents only a small proportion of recreational spending of a small number of affected wildlife observers, boaters, campers, and other recreationists, approximately a maximum of \$1.06 million annually in impact (economic output). Therefore, this rule will have no measurable economic effect on the wildlife-dependent boating and camping industries, which have annual sales of equipment and travel expenditures of over \$120 billion nationwide in 2006.

Unfunded Mandates Reform Act

Since this rule applies to public use of a federally owned and managed refuge, it will not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. The rule will not have a significant or unique effect on State, local, or Tribal governments or the private sector. A

statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

Takings (E.O. 12630)

In accordance with E.O. 12630, this rule will not have significant takings implications. This regulation affects only visitors to the refuge and describes what they can do while they are on the refuge.

Federalism (E.O. 13132)

As discussed in the Regulatory Planning and Review and Unfunded Mandates Reform Act sections above, this rule will not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment under E.O. 13132. In preparing the CCP for the refuge, we worked closely with the four States bordering the refuge, and this rule reflects the CCP.

Civil Justice Reform (E.O. 12988)

In accordance with E.O. 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. This rule clarifies and codifies established regulations and results in better understanding of the regulations by refuge visitors.

Energy Supply, Distribution or Use (E.O. 13211)

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule is a modification of existing public use and recreation programs on the refuge, it is not a significant regulatory action under E.O. 12866, and we do not expect it to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Consultation and Coordination With Indian Tribal Governments (E.O. 13175)

In accordance with E.O. 13175, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects. We coordinate recreational use on national wildlife refuges with Tribal governments having adjoining or overlapping jurisdiction before we propose changes to the regulations. During scoping and preparation of the Final EIS, we contacted 35 Indian tribes to inform them of the process and seek their comments.

Paperwork Reduction Act

This regulation does not contain any information collection requirements other than those already approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) (OMB Control Number is 1018-0102). See 50 CFR 25.23 for information concerning that approval. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Endangered Species Act Section 7 Consultation

During preparation of the Final EIS, we completed a section 7 consultation and determined that the preferred alternative, which included public use and recreation changes reflected in this rule, is not likely to adversely affect individuals of listed or candidate species or designated critical habitat of such species. The Service's Ecological Services Office concurred with this determination. Listed species on the refuge are the Higgins eye pearly mussel and candidate species are the Eastern massasauga and spectaclecase and sheepsnose mussels. You may obtain a copy of the section 7 evaluation and

accompanying biological assessment by writing: Refuge Manager, Upper Mississippi River National Fish and Wildlife Refuge, 51 East Fourth Street, Room 101, Winona, MN 55987.

National Environmental Policy Act (NEPA)

Concerning the actions that are the subject of this rulemaking, we have complied with NEPA through the preparation of a Final EIS and Record of Decision which include the major public use and recreation changes reflected in this rule. The NEPA documents are available on our Web site at <http://www.fws.gov/midwest/planning/uppermiss>.

Available Information for Specific Districts of the Refuge

The refuge is divided into four districts for management, administrative, and public service effectiveness and efficiency. These districts correspond to two or more Mississippi River navigation pools created by the series of locks and dams on the river. District offices are located in Winona, Minnesota (Pools 4-6); La Crosse, Wisconsin (Pools 7-8); McGregor, Iowa (Pools 9-11); and Savanna, Illinois (Pools 12-14). If you are interested in specific information pertaining to a particular electric motor area; slow, no-wake area; or other feature discussed in this rule, you may contact the appropriate district office listed below:

Winona District, U.S. Fish and Wildlife Service, 51 East Fourth Street, Room 203, Winona, MN 55987; Telephone (507) 454-7351.

La Crosse District, U.S. Fish and Wildlife Service, 555 Lester Avenue, Onalaska, WI 54650; Telephone (608) 783-8405.

McGregor District, U.S. Fish and Wildlife Service, P.O. Box 460, McGregor, IA 52157; Telephone (563) 873-3423.

Savanna District, U.S. Fish and Wildlife Service, 7071 Riverview Road, Thomson, IL 61285; Telephone (815) 273-2732.

Primary Author

Don Hultman, Refuge Manager, Upper Mississippi River National Wildlife and Fish Refuge, is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 26

Recreation and recreation areas, Wildlife refuges.

■ For the reasons set forth in the preamble, we amend title 50, Chapter I, subchapter C of the Code of Federal Regulations as follows:

PART 26—[AMENDED]

■ 1. Revise the authority citation for part 26 to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd-668ee, and 715i; Pub. L. 96-315 (94 Stat. 958) and Pub. L. 98-146 (97 Stat. 955).

■ 2. Revise the heading, add introductory text, and alphabetically add lists for the States of Illinois, Iowa, Minnesota, and Wisconsin to § 26.34 to read as follows:

§ 26.34 What are the special regulations concerning public access, use, and recreation for individual national wildlife refuges?

The following refuge units, listed in alphabetical order by State and unit name, have refuge-specific regulations for public access, use, and recreation.

Illinois

Upper Mississippi River National Wildlife and Fish Refuge

Refer to § 26.34 Minnesota for regulations.

Iowa

Upper Mississippi River National Wildlife and Fish Refuge

Refer to § 26.34 Minnesota for regulations.

Minnesota

Upper Mississippi River National Wildlife and Fish Refuge

(a) *Wildlife Observation, Photography, Interpretation, Environmental Education, and other General Recreational Uses.* We allow wildlife-dependent uses and other recreational uses such as, but not limited to, sightseeing, hiking, bicycling on roads or trails, picnicking, and swimming, in areas designated by the refuge manager and shown on maps available at refuge offices, subject to the following conditions:

(1) In areas posted and shown on maps as "No Entry—Sanctuary," we prohibit entry as specified on signs or maps (see § 32.42 of this chapter for list of areas and locations).

(2) In areas posted and shown on maps as "Area Closed," "Area Closed—No Motors," and "No Hunting Zone" (Goose Island), we ask that you practice voluntary avoidance of these areas by any means or for any purpose from October 15 to the end of the respective State duck hunting season. In areas marked "no motors," we prohibit the use of motors on watercraft from October 15 to the end of the respective State duck hunting season (see § 32.42

of this chapter for list of areas and locations).

(3) Commercial tours and filming require a permit issued by the refuge or district manager (see § 27.51 of this chapter).

(4) We allow the collecting of edible fruits, nuts, mushrooms, or other plant parts for personal use (no sale or barter allowed). We limit the amount you may collect to 2 gallons by volume per person, per day (see § 27.51 of this chapter). We also allow the collecting of shed deer antlers for personal use.

(5) We prohibit the harvest of wild rice; plant and animal specimens; and other natural objects, such as rocks, stones, or minerals. We only allow the collection of plants or their parts for ornamental use by permit issued by the refuge or district manager (see § 27.51 of this chapter).

(6) We prohibit the cutting, removal, or damage of any tree or vegetation on the refuge without a permit from the refuge or district manager. We prohibit attaching nails, screws, or other hardware to any tree (see § 27.51 and § 32.42 of this chapter).

(7) We prohibit all vehicle use on or across refuge lands at any time except on designated routes of travel or on the ice over navigable waters accessed from boat landings. We prohibit parking beyond vehicle control barriers or on grass or other vegetation. We prohibit parking or operating vehicles in a manner that obstructs or impedes any road, trail, fire lane, boat ramp, access gate, or other facility, or in a manner that creates a safety hazard or endangers any person, property, or environmental feature. We may impound any vehicle left parked in violation at the owner's expense (see § 27.31(h) of this chapter).

(8) We allow dogs and other domestic animals on the refuge subject to the following conditions:

(i) We prohibit dogs disturbing or endangering wildlife or people while on the refuge.

(ii) While on the refuge, all dogs must be under the control of their owners/handlers at all times or on a leash.

(iii) We prohibit allowing dogs to roam.

(iv) All dogs must be on a leash when on hiking trails, or other areas so posted.

(v) We allow working a dog in refuge waters by tossing a retrieval dummy or other object for out-and-back exercise.

(vi) We encourage the use of dogs for hunting (see § 32.42 of this chapter), but we prohibit field trials and commercial/professional dog training.

(vii) Owners/handlers of dogs are responsible for disposal of dog droppings in refuge public use

concentration areas such as trails, sandbars, and boat landings.

(viii) We prohibit horses and all other domestic animals on the refuge unless confined in a vehicle, boat, trailer, kennel or other container (see § 26.21 of this chapter).

(9) We prohibit the carrying, possessing, or discharging of firearms (including dog training pistols and dummy launchers), air guns, or any other weapons on the refuge, unless you are a licensed hunter or trapper engaged in authorized activities during established seasons, in accordance with Federal, State, and local regulations. We prohibit target practice on the refuge (see §§ 27.42 and 27.43 of this chapter).

(10) We prohibit the use or possession of glass food and beverage containers on lands within the refuge.

(11) We require that you keep all refuge lands clean during your period of use or occupancy. At all times you must keep all refuse, trash, and litter contained in bags or other suitable containers and not left scattered on the ground or in the water. You must remove all personal property, refuse, trash, and litter immediately upon vacating a site. We require that human solid waste and associated material be either removed and properly disposed of off-refuge or be buried on site to a depth of 6–8 inches (15–20 cm) and at least 50 feet (15 m) from water's edge (see § 27.94 of this chapter).

(b) *Watercraft Use.* We allow the use of watercraft of all types and means of propulsion on all navigable waters of the refuge in accordance with State regulations subject to the following conditions:

(1) In areas posted and shown on maps as "Electric Motor Area," we prohibit motorized vehicles and watercraft year-round except watercraft powered by electric motors or nonmotorized means. We do not prohibit the possession of other watercraft motors in these areas, only their use. These areas are named and located as follows:

(i) Island 42, Pool 5, Minnesota, 459 acres.

(ii) Snyder Lake, Pool 5A, Minnesota, 182 acres.

(iii) Mertes Slough, Pool 6, Wisconsin, 222 acres.

(iv) Browns Marsh, Pool 7, Wisconsin, 827 acres.

(v) Hoosier Lake, Pool 10, Wisconsin, 162 acres.

(2) In areas posted and shown on maps as "Slow No Wake Area," we require watercraft to travel at slow, no-wake speed from March 16 through October 31. We apply the applicable State definition of slow, no-wake

operation in these areas. We also prohibit the operation of airboats or hovercraft in these areas from March 16 through October 31. These areas are named and located as follows:

(i) Nelson-Trevino, Pool 4, Wisconsin, 2,626 acres (takes effect March 16, 2009).

(ii) Denzers Slough, Pool 5A, Minnesota, 83 acres.

(iii) Black River Bottoms, Pool 7, Wisconsin, 815 acres.

(iv) Blue/Target Lake, Pool 8, Minnesota, 1,834 acres.

(v) Root River, Pool 8, Minnesota, 695 acres.

(vi) Reno Bottoms, Pool 9, Minnesota, 2,536 acres.

(vii) Nine Mile Island, Pool 12, Iowa, 454 acres.

(viii) Princeton, Pool 14, Iowa, 327 acres.

(3) In water access and travel routes posted and shown on maps as "Slow No Wake Zone," we require watercraft to travel at slow, no-wake speed at all times unless otherwise posted. We apply the respective State definition of slow, no-wake operation in these areas.

(4) In portions of Spring Lake and Crooked Slough—Lost Mound, Pool 13, Illinois, posted as "Slow, 5 mph When Boats Present" and marked on maps as "Speed/Distance Regulation," we require watercraft operators to reduce the speed of their watercraft to less than 5 mph (8 kph) when within 100 feet (30 m) of another watercraft that is anchored or underway at 5 mph (8 kph) or less.

(5) We prohibit the mooring, beaching, or storing of watercraft on the refuge without being used at least once every 24 hours. We define "being used" as a watercraft moved at least 100 feet (30 m) on the water with operator on board. We prohibit the mooring of watercraft within 200 feet (60 m) of refuge boat landings or ramps. We may impound any watercraft moored in violation at the owner's expense (see § 27.32 of this chapter).

(6) Conditions A1, A2, and A11 apply.

(c) *Camping.* We allow camping on all lands and waters of the refuge as designated by the refuge manager and shown on maps available at refuge offices subject to the following conditions:

(1) We define camping as erecting a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, parking of a motor vehicle or mooring or anchoring of a vessel, for the apparent purpose of overnight occupancy, or, occupying or leaving personal property, including boats or other craft, at a site

anytime between the hours of 11 p.m. and 3 a.m.

(2) We prohibit camping at any one site for a period longer than 14 days during any 30-consecutive-day period. After 14 days, you must move all persons, property, equipment, and boats to a new site located at least 0.5 mile (0.8 km) from the previous site.

(3) We prohibit camping within 200 feet (60 meters) of any refuge boat landing, access area, parking lot, structure, road, trail, or other recreation or management facility.

(4) We prohibit camping during waterfowl hunting seasons within areas posted "No Entry—Sanctuary," "Area Closed," "Area Closed—No Motors," and "No Hunting Zone" or on any sites not clearly visible from the main commercial navigation channel of the Mississippi River (see § 32.42 of this chapter).

(5) You must occupy campsites daily. We prohibit the leaving of tents, camping equipment, or other property unattended at any site for over 24 hours, and we may impound any equipment

left in violation at the owner's expense. We define occupy and attended as being present at a site for a minimum of 2 hours daily.

(6) You must remove any tables, fireplaces, or other facilities erected upon vacating a camping or day-use site.

(7) We allow campfires in conjunction with camping and day-use activities subject to the following conditions (see § 27.95 and § 32.42 of this chapter):

(i) You may only use dead wood on the ground, or materials brought into the refuge such as charcoal or firewood. You must remove any unused firewood brought into the refuge upon departure due to the threat of invasive insects.

(ii) We prohibit building, attending, and maintaining a campfire without sufficient clearance from flammable materials so as to prevent its escape.

(iii) We prohibit building a fire at any developed facility including, but not limited to, boat landings, access areas, parking lots, roads, trails, or any other recreation or management facility or structure.

(iv) We prohibit burying live fires or hot coals when vacating a campfire site.

(v) We prohibit burning or attempting to burn any nonflammable materials or any materials that may produce toxic fumes or leave hazardous waste. These materials include, but are not limited to, metal cans, plastic containers, glass, fiberglass, treated wood products, wood containing nails or staples, wire, flotation materials, or other refuse.

(8) Conditions A4 through A11 apply.

* * * * *

Wisconsin

Upper Mississippi River National Wildlife and Fish Refuge

Refer to § 26.34 Minnesota for regulations.

Dated: March 25, 2008.

Lyle Laverty,

Assistant Secretary for Fish and Wildlife and Parks.

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